

**U.S. Army
Corps of Engineers
Civil Works
Policy
Pocket Reference**

Prepared by the
Planning and Policy Division
Directorate of Civil Works
Headquarters USACE

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This edition of the Civil Works Policy
Pocket Reference reflects
legislation through and including
WRDA 2000 (P.L. 106-541; 114 Stat. 2572)

PREFACE

This Pocket Reference has been developed to provide a succinct summary of the U.S. Army Corps of Engineers authorities and policies that address its water resources missions. Comments and suggestions on this guide should be addressed to:

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The Pocket Reference can be found at the Directorate of Civil Works homepage

<http://www.usace.army.mil/inet/functions/cw/>

and then looking under Planning and Policy Division

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ACRONYMS

ASA(CW) - Assistant Secretary of the Army (Civil Works)
CFR - Code of Federal Regulations
CG - Construction General
DOD - Department of Defense
DOE - Department of Energy
DOI - Department of Interior
DPR - Detailed Project Report
DSAP - Dam Safety Assurance Program
E&D - Engineering and Design
EPA - Environmental Protection Agency
F&WL - Fish and Wildlife
FCA - Flood Control Act
FERC - Federal Energy Regulatory Commission
FY - Fiscal Year
GNF - General Navigation Features
IWTF - Inland Waterways Trust Fund
LER - Lands, Easements, and Rights-of-Way
LERR - Lands, Easements, Rights-of-Way and Relocations
LERRD - Lands, Easements, Rights-of-Way, Relocations, and Disposal/Borrow Areas
mlw - mean low water
NED - National Economic Development
NEPA - National Environmental Policy Act of 1969
OMRR&R - Operations, Maintenance, Repair, Replacement and Rehabilitation
PCA - Project Cooperation Agreement
PDC - Paid During Construction
PED - Preconstruction Engineering and Design
P.L. - Public Law
PMA - Power Marketing Agency
RHA - Rivers and Harbors Act
S&A - Supervision and Administration
SA - Secretary of the Army
SRUF - Special Recreation Use Fees
TPC - Total Project Costs
U.S.C. - United States Code
WRDA - Water Resources Development Act

NAVIGATION, Harbors

Authority

- ☐ Sections 101, 204 and 214, WRDA 1986, (P.L. 99-662)
- ☐ Section 13, WRDA 1988 (P.L. 100-676)
- ☐ Section 201, WRDA 1996 (P.L. 104-303)

Provisions

- ☐ Federal work must be in the general public interest and available to all on equal terms.
- ☐ The Federal interest extends only to GNF: primary access channels, anchorages, turning basins, locks and dams, harbor areas, jetties and breakwaters.

Cost Sharing, Harbors

- ☐ For providing depths to 20 feet below mlw, the non-Federal sponsor pays 10% of the GNF
- ☐ For providing depths from 20 feet to 45 feet below mlw, the non-Federal sponsor pays 25% of the GNF
- ☐ For providing depths exceeding 45 feet below mlw, the non-Federal sponsor pays 50% of the GNF

Non-Federal sponsors must:

- ☐ provide all LERR (with exceptions per page 3) for construction and maintenance;
- ☐ provide cash contributions toward the costs for construction of the GNF of the project, which includes the costs of constructing land-based and aquatic dredged material disposal facilities, paid during construction;
- ☐ hold and save the U.S. free from damages due to the construction, operation and maintenance dredging;
- ☐ contribute 50% of the incremental costs for maintenance dredging associated with project depths in excess of 45 feet;
- ☐ for all depths, provide an additional cash contribution equal to 10% of GNF, which includes dredged material disposal construction costs. These costs may be paid over a period not exceeding 30 years. The sponsor's costs for LERR, except utilities, are credited against the additional cash contribution.

Relocations Exceptions

- ☐ The owner of a utility requiring relocation as part of an improvement deeper than 45 feet below mlw must pay 50% of the relocation costs and the non-Federal sponsor must pay the other 50% of the relocations cost. However, the non-Federal sponsor shall receive a credit for the utility relocation costs against the additional cash contribution (see above).
- ☐ The owner of a bridge requiring modification must share in the costs according to the principles of the Truman-Hobbs Act (P.L. 77-647); the balance is cost shared as part of the GNF.

NAVIGATION, Harbors, Disposal Partnerships

Authority

- ☐ Section 217, WRDA 1996 (P.L. 104-303)

Provisions

- ☐ The SA may, at the request of a non-Federal interest, add capacity at a dredged material disposal site being constructed by the SA if the non-Federal sponsor pays, during the period of construction, all costs associated with the additional capacity. The non-Federal sponsor can set and collect fees assessed to third parties to recover those costs.
- ☐ The SA may allow non-Federal interests to use capacity in an existing Corps disposal site if such use will not reduce the availability of the facility for the Federal project. The SA can impose fees to recover capital, operation, and maintenance dredging costs associated with the non-Federal interests' use.
- ☐ The SA may use public-private partnerships in the design, construction, management, or operation of dredged material disposal facilities in connection with construction or maintenance of Federal navigation projects.
- ☐ These partnerships may be implemented through agreements with non-Federal public interests, a private entity, or both. Funds for the work may be provided in whole or in part by the private entity.
- ☐ The SA may reimburse the private entity, subject to appropriations, for the disposal of dredged material in the facility through the payment of a disposal user fee. The fee shall be sufficient to recover the funds contributed by the private entity plus a reasonable rate of return on investment.
- ☐ The Federal share of the fee shall equal the Federal percentage of the disposal facility cost, in accordance with existing cost sharing requirements.

NAVIGATION, Inland Waterways, Locks and Dams

Authority

- ☐ Section 102, WRDA 1986 (P.L. 99-662)
- ☐ Section 206, Inland Waterways Revenue Act of 1978 (P.L. 95-502) , as amended by Section 1405, WRDA 1986.
- ☐ Specific Waterway and Project Authorizations. Section 206 of the Inland Waters Revenue Act of 1978, as amended, (33 U.S.C. Section 1804) contains the listing of inland waterways subject to fuel taxes paid in to the IWTF.

Provisions

- ☐ Lock and dam replacements are generally studied and recommended for specific Congressional authorization; other extensive work is normally accomplished under the major rehabilitation program.

Cost Sharing

- ☐ If the waterway users are subject to fuel taxes paid into the IWTF, there are not any non-Federal cost sharing requirements in connection with the Federal project improvements to the waterway (not for LERRD, construction, or OMRR&R).
- ☐ Construction costs are funded 50% from the Federal general revenues and 50% from the IWTF. Maintenance costs are funded 100% from Federal general revenues.
- ☐ Inland channels not specifically designated by Congress as part of the taxable system will be cost shared according to the terms for harbors.

NAVIGATION, Section 107

Authority

- ☐ Section 107, 1960 RHA (P.L. 86-645) as amended. This is a continuing authority.
- ☐ Section, 915(d), WRDA 1986, (P.L. 99-662)

Provisions

- ☐ Without specific authorization, the Corps may study, adopt, construct and maintain navigation projects, using same procedures and policies that apply to Congressionally authorized projects.
- ☐ The Federal share of initial implementation costs for any one project may not exceed \$4 million and the program limit is \$35 million per year.
- ☐ ASA(CW) policy also stipulates that the Federal share of total costs (initial costs plus the capitalized value of future maintenance costs) shall not exceed 2.25 times the initial Federal costs, or \$4.5 million, whichever is greater.

Cost Sharing

- ☐ Non-Federal sponsors must participate in project costs and OMRR&R in accordance with the established requirements herein set forth for navigation projects or measures (general harbor features, inland waterways, or recreational harbor features, as the case may be).
- ☐ The non-Federal sponsor must hold and save the U.S. free from damages due to the construction, operation and maintenance.
- ☐ The non-Federal sponsor is also responsible for all project and maintenance dredging costs in excess of the Federal cost limitation.

NAVIGATION, Clearing and Snagging, Section 3

Authority

- ☐ Section 3, 1945 RHA (P.L. 79-14), as amended. This is a continuing authority.
- ☐ Section 915(g), WRDA 1986 (99-662).

Provisions

- ☐ Without specific authorization, the Corps may undertake emergency clearing and snagging for navigation.

- ☐ May be used for clearance of obstructions both within authorized projects and at non-project locations used for navigation.
- ☐ May not be used to alleviate normal shoaling or for betterments.
- ☐ No specific limit on Federal costs per location; there is an annual program limit of \$1 million.

Cost Sharing

- ☐ Non-Federal sponsors are responsible for any LERRD requirements, for any recurring maintenance, and must hold and save the U.S. free from damages due to the construction.

NAVIGATION, Mitigation of Damages, Caused by Federal Navigation Projects, Section 111

Authority

- ☐ Section 111, 1968 RHA (P.L. 90-483), as amended. This is a continuing authority.
-
- ☐ Section 940, WRDA 1986 (P.L. 99-662)
- ☐ Section 214, WRDA 1999 (P.L. 106-53)

Provisions

- ☐ Without specific authorization, the Corps may study and implement works (structural or nonstructural) to prevent or mitigate damage to shorelines caused by Federal navigation projects.
- ☐ The Federal share of costs for any one project may not exceed \$5 million. (Specific congressional authorization is required for a meritorious project for which the Federal share of costs would exceed this limit).

Cost Sharing

- ☐ Non-Federal sponsors must share in the mitigation costs in the same proportion they shared in the costs for the navigation project causing the damage.
- ☐ Non-Federal sponsors are responsible for operations, maintenance, repair, replacement and rehabilitation of the mitigation measures.
- ☐ The non-Federal sponsor must hold and save the U.S. free from damages due to the construction, operation and maintenance.
- ☐ Non-Federal sponsors must provide all LERRD and public access.

NAVIGATION, Recreation

Authority

- ☐ Section 103(c)(4), WRDA 1986,
(P.L. 99-662)

Cost Sharing

- ☐ Non-Federal sponsors must provide, at their expense, all ancillary shoreside facilities, marina facilities including interior access channels and berthing areas.
- ☐ Non-Federal sponsors must provide all related LERRD for construction, operation and maintenance, except to the extent that the value may exceed 50% of the total (separable and joint, if any) recreational navigation costs.
- ☐ If the value of the LERRD contribution specified above is less than 50% of total recreational navigation costs (GNF costs plus LERRD), non-Federal sponsors must provide a cash contribution PDC, so that the total non-Federal share (cash plus LERRD) equals 50%.
- ☐ Non-Federal sponsors must pay 100% of the OMRR&R costs and hold and save the U.S. free from damages due to the construction, operation and maintenance.

Note: Administration policy precludes budgeting for projects where recreational boating benefits predominate.

FLOOD CONTROL, Structural

Authority

- ☐ Sections 1 and 3, 1936 FCA,
(P.L. 74-738)
- ☐ Section 2, 1941 FCA (P.L. 77-228)
- ☐ Section 103, WRDA 1986, (P.L. 99-662) as amended by Section 202(a), WRDA 1996, (P.L. 104-303)
- ☐ Section 402, WRDA 1986, (P.L. 99-662) as amended by Section 202(c), WRDA 1996, (P.L. 104-303) and Section 209, WRDA 2000 (P.L. 104-303)

Provisions

- ☐ Federal Government should participate in improvement(s) for flood control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs (Section 1, 1936 FCA).
- ☐ Non-Federal sponsors must comply with Federal flood insurance program and prepare floodplain management plan within one year after signing PCA and implement plan one year after project completion.

Cost Sharing

- ☐ Non-Federal interests must provide all LERRD not contaminated by hazardous, radioactive and toxic wastes, and a minimum cash contribution of 5% of the TPC of the structural flood control features, PDC.
- ☐ For projects authorized on or before the date of enactment of WRDA 1996 (12 October 1996): If the value of the contributions specified above is less than 25% of TPC, non-Federal sponsors must provide an additional cash contribution PDC so that the total non-Federal share equals 25% of TPC.
- ☐ For projects authorized after the date of enactment of WRDA 1996 (12 October 1996): If the value of the contributions specified above is less than 35% of TPC, non-Federal sponsors must provide an additional cash contribution PDC so that total non-Federal share equals 35% of TPC.
- ☐ The maximum non-Federal contribution will not exceed 50% of TPC (5% cash plus 45% credit for LERRD). Arrangements for funding LERRD requirements that may exceed 45% of TPC is covered in the PCA.
- ☐ Non-Federal sponsors must pay 100% of OMRR&R costs and hold and save the U.S. free from damages due to the construction, operation and maintenance.

FLOOD CONTROL, Nonstructural

Authority

- ☐ Section 73, WRDA 1974 (P.L. 93-251)
- ☐ Section 103(b), WRDA 1986,
(P.L. 99-662)
- ☐ Section 308, WRDA 1990 (P.L. 101-640)
- ☐ Section 202(a) WRDA 1996,
(P.L. 104-303)
- ☐ Section 402, WRDA 1986, (P.L. 99-662) as amended by Section 202(c), WRDA 1996, (P.L. 104-303) and Section 209, WRDA 2000 (P.L. 104-303)

Provisions

- ☐ In Corps project planning, consideration must be given to nonstructural alternatives to prevent or reduce flood damages.
- ☐ Non-Federal sponsors must comply with Federal flood insurance program and prepare floodplain management plan within one year after signing PCA and implement plan one year after project completion.

Cost Sharing

- ☐ For projects authorized on or before the date of enactment of WRDA 1996 (12 October 1996), non-Federal sponsors must provide all LERRD, except to the extent that the value thereof may exceed 25% of TPC for the nonstructural measures.
- ☐ For projects authorized after the date of enactment of WRDA 1996 (12 October 1996), non-Federal sponsors must provide all LERRD, except to the extent that the value thereof may exceed 35% of TPC for the nonstructural measures.
- ☐ If the value of non-Federal contributions is less than 25% or 35% of TPC (depending on when the project was authorized), a cash contribution must be made after project construction completion so that, when combined with LERRD value, the total non-Federal share equals the appropriate share (25% or 35%) of TPC.
- ☐ Non-Federal sponsors must pay 100% of OMRR&R related to nonstructural measures and hold and save the U.S. free from damages due to the construction, operation and maintenance.

FLOOD CONTROL, Section 205

Authority

- ☐ Section 205, 1948 FCA (P.L. 80-858), as amended. This is a continuing authority.
- ☐ Section 202, WRDA 1996 (P.L. 104-303)
- ☐ Section 201, WRDA 1999 (P.L. 106-53)
- ☐ Section 218, WRDA 2000 (P.L. 106-541)

Provisions

- ☐ Without specific authorization, Corps may study, adopt and construct flood control projects.
- ☐ Non-Federal sponsors must comply with Federal flood insurance program and prepare floodplain management plan within one year after signing PCA and implement plan one year after project completion.

Cost Sharing

- ☐ The Federal share of costs for any one project may not exceed \$7 million and the Federal program is limited to \$50 million per year. The non-Federal sponsor is responsible for all costs in excess of the Federal per project limit, even if it results in a non-Federal share greater than the maximum non-Federal cost sharing percentage for structural flood control measures (50%, see page 17) or nonstructural flood control measures (35%). The use of the Section 205 for such high cost projects is not advised.
- ☐ Non-Federal sponsors must participate in project costs in accordance with the established requirements as previously set forth for flood control projects or measures (structural or nonstructural), except that the non-Federal cost sharing percentage to be used will depend on whether the DPR was approved, on or before (25%) or after (35%) 12 October 1996. If no DPR was prepared, the non-Federal cost sharing percentage to be used will depend on whether construction was initiated on or before (25%) or after (35%) 12 October 1996.

FLOOD CONTROL, Clearing and Snagging, Section 208

Authority

- ☐ Section 208, 1954 FCA (P.L. 83-780), as amended. This is a continuing authority.
- ☐ Section 202, WRDA 1996 (P.L. 104-303)

Provisions

- ☐ Without specific authorization, Corps may study, adopt and construct in-stream clearing and snagging projects in the interest of flood control.
- ☐ The Federal share of costs for any one project may not exceed \$500,000 (per Section 915(b), P.L. 99-662).

Cost Sharing

- ☐ Non-Federal sponsors must participate in project costs in accordance with the established requirements as previously set forth for structural flood control projects (see page 16) or measures under the Section 205 authority.
- ☐ The non-Federal sponsor is also responsible for all costs in excess of the Federal cost limit.

FLOOD CONTROL, Flood Plain Management Services Program

Authority

- ☐ Section 206, 1960 FCA (P.L. 86-645), as amended.

Provisions

- ☐ General authority to provide flood plain information and planning assistance to state, county, and city governments, as well as to other Federal agencies.
- ☐ Flood and flood plain information is also provided to private citizens, corporations, and groups.
- ☐ Flood proofing and general flood plain management guidelines are developed and published.
- ☐ Hurricane Evacuation Studies and Flood Warning Preparedness Studies are conducted jointly with other Federal agencies for state and local governments.
- ☐ Non-Federal public entities need not pay the Corps for these services; private citizens and other Federal agencies are required to pay for these services. Involvement of requesters is strongly encouraged.

EMERGENCY STREAMBANK AND SHORE PROTECTION, Section 14

Authority

- ☐ Section 14, 1946 FCA (P.L. 79-526), as amended. This is a continuing authority.
- ☐ Section 27, WRDA 1974 (P.L. 93-251)
- ☐ Section 915(c), WRDA 1986, (P.L. 99-662)

- ☐ Section 219, WRDA 1996 (P.L. 104-303).

Provisions

- ☐ Authorizes the Corps to study, adopt and construct emergency streambank and shoreline protection works to protect public highways and bridges, and other public works, and nonprofit public services such as churches, hospitals, and schools.
- ☐ The annual program limit for Federal expenditures is \$15,000,000, with not more than \$1,000,000 in Federal expenditures at any one site.

Cost-Sharing

- ☐ Non-Federal sponsors provide needed LERRD and 25% cash, (if the DPR was approved on or before 12 October 1996), or at least 35% cash (if the DPR was approved after 12 October 1996). If no DPR was prepared, the non-Federal cost sharing percentage to be used will depend on whether construction was initiated on or before (25%) or after (35%) 12 October 1996.
- ☐ When the Federal share of costs would otherwise exceed the per project limit (\$1,000,000), non-Federal sponsors must provide the excess.
- ☐ Non-Federal sponsors must provide OMRR&R for the completed project and hold and save the U.S. free from damages due to the construction, operation and maintenance.

HURRICANE AND STORM DAMAGE REDUCTION, Shore Protection, General

Authority

- ☐ 1946 Shore Protection Cost Sharing Act (P.L. 79-727), as amended.
- ☐ Section 55, WRDA 1974 (P.L. 93-251)
- ☐ 1956 Beach Nourishment Act,
(P.L. 84-826)
- ☐ Sections 103 (c) (5) and (d), WRDA 1986, (P.L. 99-662)
- ☐ Section 402, WRDA 1986, (P.L. 99-662) as amended by Section 14, WRDA 1988(P.L. 100-676), Section 202(c), WRDA 1996, (P.L. 104-303) and Section 209, WRDA 2000 (P.L. 104-303)
- ☐ Section 215 (a), WRDA 1999,
(P.L. 106-53)

Provisions

- ☐ Establishes Federal policy to assist in the construction, but not the maintenance, of works for the improvement and protection of the shores of the U.S. against erosion by waves or currents.
- ☐ The Corps can provide technical and engineering assistance to non-Federal public interests in developing structural and nonstructural methods of preventing damages attributable to shore and streambank erosion (WRDA 1974, P.L. 93-251)
- ☐ Federal assistance in periodic beach nourishment is provided on the same basis as new construction when it would be the most suitable and economical remedial measure (P.L. 84-826).

- ☐ Non-Federal sponsors must comply with Federal flood insurance program and prepare floodplain management plan within one year after signing PCA and implement plan one year after project completion (Section 402, WRDA 1986, (P.L. 99-662) as amended).
- ☐ ASA(CW) policy stipulates that Corps projects be formulated primarily for hurricane and storm damage reduction.
- ☐ The Administration's shore protection policy is that projects that support mainly recreation activities or projects in tourist or recreation areas that provide substantial income to regional and local economies can be undertaken solely by non-Federal interests.

Cost Sharing

- ☐ Non-Federal sponsors are responsible for providing all lands, easements, rights-of-way, relocations and dredged material disposal areas (LERRD) and public access.
- ☐ Costs assigned to protection of Federally owned lands and/or shores are 100% Federal for initial construction and periodic nourishment.
- ☐ Costs assigned to privately owned lands (undeveloped) and shores (where use of the shores is limited to private interests) are 100% non-Federal for initial construction and periodic nourishment.
- ☐ Costs assigned to privately owned, developed lands where criteria for public access to and public use of the shores are met are 35% non-Federal.
- ☐ Costs assigned to non-Federal public shores used for parks and recreation are 50% non-Federal.
- ☐ The non-Federal costs for LERRD will be credited against the sponsor's total (percent) responsibility or sharing construction costs; any cost for LERRD in excess of 35% will be reimbursed to the sponsor.
- ☐ Non-Federal interests must pay 100% of OMRR&R costs assigned to non-Federal shores, and hold and save the U.S. free from damages due to the construction, operation and maintenance.
- ☐ Costs assigned for periodic nourishment to privately owned, developed lands where criteria for public access to and public use of the shores are met are 35% non-Federal for projects authorized on or before 31 December 1999, and for projects authorized after 31 December 1999, 40% non-Federal for periodic nourishment carried out after 1 January 2001, 45% non-Federal for periodic nourishment carried out after 1 January 2002, and 50% for periodic nourishment carried out after 1 January 2003.

HURRICANE AND STORM DAMAGE REDUCTION, Shore Protection, Section 103

Authority

- ☐ Section 3, Act of 13 August 1946, (P.L. 79-727). This is a continuing authority.
- ☐ Section 103, 1962 RHA (P.L. 87-874)
- ☐ Sections 103(c), 103(d), 103(i), and 915(e) (P.L. 99-662), WRDA 1986
- ☐ Section 402, WRDA 1986, (P.L. 99-662) as amended by Section 14, WRDA 1988(P.L. 100-676), Section 202(c), WRDA 1996, (P.L. 104-303) and Section 209, WRDA 2000 (P.L. 104-303)
- ☐ Section 215 (a), WRDA 1999, (P.L. 106-53)
- ☐ Section 226, WRDA 1999 (P.L. 106-53)

Provisions

- ☐ Without specific authorization, the Corps may study, adopt and construct continuing authority beach erosion control projects.
- ☐ Federal costs for each project may not exceed \$3,000,000 and the Federal program is limited to \$30 million per year.
- ☐ ASA(CW) policy stipulates that Corps projects be formulated primarily for hurricane and storm damage reduction.
- ☐ The Administration's shore protection policy is that projects that support mainly recreation activities or projects in tourist or recreation areas that provide substantial income to regional and local economies can be undertaken solely by non-Federal interests.

Cost Sharing

- ☐ Same as Congressionally-authorized projects. (See Hurricane And Storm Damage Reduction, Shore Protection, General, above.)

EMERGENCY PREPAREDNESS, RESPONSE, and RECOVERY

Authority

- ☐ Section 5a, FCA of August 18, 1941, (P.L. 77-228), as amended
- ☐ Emergency Flood Control Funds Act of 1955 (P.L. 84-99)
- ☐ RHA of 1962, (P.L. 87-874)*
- ☐ Section 82, WRDA 1974 (P.L. 93-251)*
- ☐ P.L. 95-51*
- ☐ Section 302, WRDA 1990 (P.L. 101-640)*
- ☐ Section 203 (e and f), WRDA 1996 (P.L. 104-303)*

* amendments to P.L. 84-99 and collectively referred to as P.L. 84-99

Provisions

P.L. 84-99 and prior legislation allow Corps participation in:

- ☐ Planning and preparedness for all natural disasters, P.L. 84-99 and P.L. 101-640;
- ☐ Flood fighting and rescue operations, FCA of 1941;
- ☐ Emergency repair and restoration of flood damaged or destroyed flood control works, FCA of 1941;
- ☐ Emergency protection, repair and restoration of Federal hurricane or shore protection project structures damaged or destroyed by extraordinary storm, P.L. 87-874;
- ☐ Emergency supply of clean drinking water where source is contaminated, P.L. 93-251;
- ☐ Emergency supply of clean drinking water in drought distressed areas, P.L. 95-51;
- ☐ Nonstructural alternatives to the repair or restoration of flood damaged flood control works, P.L. 104-303; and

- ☐ Advance Measures to prevent loss of life and catastrophic property damage when there is an imminent threat of unusual flooding, P.L. 84-99.

Policy and Cost Sharing - Common to all Corps Assistance under P.L. 84-99

- ☐ Corps assistance is undertaken only to supplement tribal, state, and local efforts. Corps assistance is at 100% Federal cost, except as provided below.
- ☐ Public sponsors must provide all required LERRD.
- ☐ Public sponsors are responsible for 100% of the OMRR&R requirements in connection with assistance under P.L. 84-99, and must hold and save the U.S. free from damages due to the construction, operation and maintenance.
- ☐ The sponsor may be asked, in connection with these or any other of the efforts authorized under Section 5(a) of the FCA of 1941, as amended, to provide such other measures of cooperation as, in the discretion of the Chief of Engineers, would be appropriate to the specific case.
- ☐ A Cooperation Agreement (CA) is required for all direct assistance.

Policy and Cost Sharing - Rehabilitation Assistance for Damaged Flood Control Works

Non-Federal Projects:

- ☐ Must be inspected by the Corps (prior to occurrence of any damage) and meet minimum Corps standards, which results in granting of Active status.
- ☐ Must pass periodic continuing eligibility inspections to maintain Active status. Only Active projects are eligible for Rehabilitation Assistance. A benefit/cost ratio greater than unity is required for the Rehabilitation Assistance.
- ☐ Public sponsor pays 20% of the rehabilitation costs, including S&A, excluding E&D and LERRD for Rehabilitation Assistance, as well as all deferred and deficient maintenance costs.

Federal Projects:

- ☐ Are granted Active status upon turnover to the public sponsor for OM&RRR.
- ☐ Must pass periodic continuing eligibility inspections to maintain Active status. Only Active projects are eligible for Rehabilitation Assistance. A benefit/cost ratio greater than unity is required for the Rehabilitation Assistance. Assistance is at 100% Federal cost, excluding costs for LERRD and deferred and deficient maintenance.
- ☐ Federal Hurricane and Storm Damage Reduction, Shore Protection Projects: Rehabilitation of structural features of these projects is performed as stated above for Federal projects. The damage must have been caused by an "extraordinary storm". Standard level of assistance is to replace sand lost or to restore minimum effective functioning of the project, whichever is less. Normally, renourishment to original level is required. Cost sharing for the added increment will be in accordance with PCA for original project and paid with CG funds.

Nonstructural Alternative Project

- ☐ There is nonstructural alternative project option available in lieu of structural rehabilitation for both Federal and non-Federal projects. The Corps may bear up to 100% of the cost of the nonstructural alternative project, subject to a cost cap for Corps costs.

Policy and Cost Sharing - Advance Measures Assistance under P.L. 84-99

- ☐ Standard for provision of Advance Measures assistance is an "imminent threat of unusual flooding".
- ☐ Cost sharing: Investigation and technical assistance are 100% Federal cost. Assistance using a temporary standard of construction is at 100% Federal cost. Assistance using a permanent standard of construction is normally 75% Federal cost and 25% non-Federal cost.

Policy and Cost Sharing - Emergency Water Assistance under P.L. 84-99

Emergency Water Assistance Due to Contaminated Water Source

- ☐ The Corps may provide water to any locality confronted with a source of contaminated water causing or likely to cause a substantial threat to the public health and welfare of the locality. Various ways to establish existence of a threat can be used. The Corps may purchase, transport and distribute water to meet minimum human health and welfare needs at 100% Federal expense. Long term restoration of water supplies is a local responsibility.

Emergency Water Assistance Due to Drought

- ☐ Requires drought distressed area declaration by the Director of Civil Works in conjunction with the ASA(CW). The Corps may transport water to meet minimum essential health and welfare needs at 100% Federal expense. Purchase of water is a local responsibility. Long term restoration of water supplies is a local responsibility.

HYDROELECTRIC POWER, General

Authority

- ☐ Section 4, FCA of 1938 (P.L. 75-61) and other specific Congressional authorizations direct consideration of hydroelectric power.
- ☐ Section 5, FCA of 1944 (P.L. 78-534)
- ☐ Section 103 (c) (1), WRDA 1986, (P.L. 99-662)
- ☐ Section 703 of WRDA 1986 (P.L. 99-662)

Provisions

- ☐ Corps policy is to maximize sustained public benefits from each of its projects for all desirable purposes, including power.
- ☐ Power developed at Corps projects surplus to project needs is turned over to DOE for marketing (P.L. 78-534).
- ☐ Non-Federal power developments may be constructed at Corps projects through FERC licensing procedures, and it is Corps policy to encourage non-Federal interests to develop such hydropower potential where it is feasible and not authorized for Federal development.
- ☐ Recommendations for Federal development in Corps reports are made only if it can be shown that non-Federal development is impractical (i.e., non-Federal project would produce significantly fewer net NED benefits than a Federal project when all project outputs are considered).
- ☐ No general authority exists for Corps to develop power at non-Corps sites, but this has been done with specific Congressional authority.

Cost-Sharing

- ☐ All capital investment and OMRR&R costs allocated to power are 100% paid for by others on a reimbursable basis. DOE's PMA's establish power rates that will recover costs over time (usually 50 years).
- ☐ Section 103(c)(1) of P.L. 99-662 provides that cost sharing will be in accordance with existing law, which anticipates recovery of project costs after project completion through rates set by the PMA. As a matter of Administration policy, every effort is made to seek payment of construction costs from a non-Federal sponsor during the construction period.
- ☐ Section 703 of WRDA 1986 (P.L. 99-662), authorizes the SA, upon request of non-Federal interests, to survey the potential and methods of rehabilitating former industrial sites, millraces, etc., for use as hydroelectric facilities, and to provide technical assistance in dredging projects to rehabilitate the sites that have been surveyed. In return, the non-Federal entity will receive the power produced or an equivalent value of power for a period of 30 years.

HYDROELECTRIC POWER, Facilities for Future Power Installations (Minimum Provisions)

Authority

- ☐ Section 4, 1938 FCA (P.L. 75-761) and subsequent authorizing acts.

Provisions

- ☐ Penstocks and other similar facilities may be included in the initial construction of projects where power is not authorized. This requires approval of the SA, on recommendation of the Corps and FERC.
- ☐ Probability of future economic and financial viability and willingness of non-Federal interests to finance or contract for the facilities must be determined.
- ☐ Purpose of this authority is to preclude loss of hydropower viability and to provide significant future construction savings.

Cost-Sharing

- ☐ Costs allocated to hydropower are 100% paid by others on a reimbursable basis. The power marketing agencies of DOE establish rates that will recover costs over time (usually 50 years) when the power is ultimately developed.

WATER SUPPLY STORAGE

Authority

- ☐ Water Supply Act of 1958 (P.L. 85-500), as amended.
- ☐ P.L. 88-140, Permanent Rights to Storage
- ☐ Section 103 (c) (1), WRDA 1986, (P.L. 99-662)
- ☐ Sections 931 and 932, WRDA 1986 (P.L. 99-662)

Provisions

- ☐ Water supply storage capacity or space may be included in any Corps reservoir to impound water for present and future municipal or industrial use. Not more than 30% of the total allocated costs may be for future water needs.

- ☐ Modification of an existing reservoir, by structural changes or reallocation of existing storage, to add or increase dedicated storage capacity or space for water supply, requires separate Congressional authorization if it would significantly impact existing authorized purposes or involve major structural or operational changes.
- ☐ By policy, the Chief's discretion for any such reallocation is limited to the lesser of 15% of total usable storage or 50,000 acre-feet provided it does not have severe impacts on other project purposes.
- ☐ P.L. 88-140 grants permanent rights to use the storage space to the non-Federal sponsor upon completion of the payments of the costs of storage.

Cost-Sharing

- ☐ Non-Federal sponsors must agree to provide 100% reimbursement of costs (including operations and maintenance on an annual basis and repairs, reconstruction, and major rehabilitations and replacements as they are required) allocated to water supply, within life of project but not more than 30 years from initial use of the project for water supply.
- ☐ For new projects, non-Federal costs are based on the actual development costs allocated to water supply storage. For reallocations, non-Federal costs are based on the current value of that storage.
- ☐ Current Administration policy requires that non-Federal sponsors pay all costs of construction during the period of construction.

WATER SUPPLY, Surplus Water

Authority

- ☐ Section 6, 1944 FCA (P.L. 78-534)

Provisions

- ☐ ASA(CW) may make agreements with states, municipalities, private concerns and individuals, at prices and terms ASA(CW) finds reasonable, to provide surplus water or temporary use of available storage space from Corps reservoirs for domestic and industrial uses, rather than reallocating and granting a permanent right to that storage space.
- ☐ The storage space must have been provided in the reservoir for some other purpose not yet being realized, or the water would have to be more beneficially used as municipal and industrial water than for other authorized purposes. The use must not significantly affect the authorized purposes.
- ☐ Such agreements are normally limited to 5 years, with provisions for additional 5-year extensions.

Cost Sharing

- ☐ For the period of use, user pays an annual amount based on the updated cost for that part of the reservoir costs plus OMRR&R.

WATER SUPPLY, Minor Emergency Withdrawals

Authority

- ☐ Section 6, 1944 FCA (P.L.78-534)

Provisions

- ☐ When the governor of a state has declared an emergency due to a drought, withdrawals of up to 50 acre-feet of storage may be permitted for domestic and industrial uses for a period of up to one year.

Cost-Sharing

- ☐ The cost assigned to the water is based on the current value of the storage, with a minimum of \$50 per year. The permits are signed by the project manager.

RECREATION, Reservoir and Lock Projects

Authority

- ☐ Section 4, 1944 FCA (P.L. 78-534), as amended
- ☐ Federal Water Project Recreation Act, 1965, (P.L. 89-72), as amended to add authorized recreation if Corps owns all LER and if basic project construction was completed between 9 June 1965 and 30 April 1986.
- ☐ Section 103(c)(4) and 103(e), WRDA 1986 (P.L. 99-662), after 30 April 1986
- ☐ Section 2804 of P.L. 102-575 (Reclamation Projects Authorization and Adjustments Act of 1992)

Provisions

- ☐ Projects must be under control of the Army.
- ☐ Requires non-Federal cost sharing.
- ☐ If there is no willing cost sharing sponsor, Corps may only provide minimum facilities such as guardrails, gates, barricades, turnarounds, comfort stations and vault toilets for health and safety. The Corps may also provide type “C” visitor centers, handicap access and operational boat ramps.

Cost-Sharing

- ☐ Non-Federal sponsor pays all OMRR&R costs and 50% of the first costs of all recreation features, except when those costs are paid from SRUF funds.
- ☐ ASA(CW) requires the non-Federal sponsor share to be provided during construction.
- ☐ Minimum facilities are joint costs and are shared among the project purposes in accordance with Section 103(c).
- ☐ Upgrading sanitary facilities on Corps owned lands and/or operated areas is a 100% Federal cost.

RECREATION, Non-reservoir Projects

Authority

- ☐ Section 4, 1944 FCA (P.L. 78-534)
- ☐ Section 103(c)(4) and 103(e), WRDA 1986 (P.L. 99-662), after 30 April 1986

- ☐ Section 313, WRDA 1990 (P.L. 101-640)

Provisions

- ☐ Requires non-Federal cost sharing.
- ☐ Recreation benefits shall not influence project formulation. Non-reservoir structural and nonstructural projects must attain a benefit/cost ratio greater than unity without recreation.
- ☐ Facilities must be on LER required for basic project.
- ☐ Separable lands may be acquired by the non-Federal sponsor for recreation at flood control projects for access, parking and facilities required for health and safety.
- ☐ Includes recreational navigation
- ☐ Recreation development costs at structural flood control projects may not increase the Federal project cost by more than 10% without approval of the ASA(CW).
- ☐ Recreation facilities are not provided at shore protection projects.
- ☐ The Corps must consider recreation benefits in planning, operating, and maintaining projects. Corps can expend up to \$2 million annually to mitigate for the adverse impacts on recreation from the operation, maintenance, repair, rehabilitation or replacement at a project.

Cost-Sharing

- ☐ Non-Federal sponsors pay 50% of the separable costs and all OMRR&R.
- ☐ For harbor and channel projects, non-Federal sponsors pay 50% of the joint and separable costs allocated to recreational navigation and all OMRR&R assigned to recreational navigation.
- ☐ ASA(CW) requires the non-Federal sponsor share be provided during construction.

ENVIRONMENTAL PROTECTION and RESTORATION, General (see note below)

Authority

- ☐ F&WL Coordination Act of 1958
- ☐ NEPA (1969)
- ☐ Coastal Zone Management Act of 1972
- ☐ Clean Water Act of 1972
- ☐ Marine Protection, Research, and Sanctuaries Act of 1972
- ☐ Endangered Species Act of 1973
- ☐ WRDA's 1986, 1990, 1992, 1996, 1999, and 2000
- ☐ Coastal Wetlands Planning, Protection, and Restoration Act of 1990
- ☐ Estuary Restoration Act of 2000, Title 1 of P.L. 106-457
- ☐ Executive Order 11990, "The Protection of Wetlands"
- ☐ Executive Order 11991, "Relating to Protection and Enhancement of Environmental Quality"

Note: Environmental Protection and Restoration projects are also known as Ecosystem Restoration and Protection

projects. Ecosystem and environmental are used interchangeably in law, policy, and common usage.

Corps Policy

- ☐ By law and administration policy, environmental protection and restoration, navigation and flood control are the primary Civil Works missions of the Corps.
- ☐ Mitigation and restoration typically involve the same types of actions, but for different reasons. Mitigation eliminates, reduces, or compensates for the adverse impacts of a proposed project on ecosystem functions, whereas restoration efforts focus on restoring an already degraded ecological condition to produce environmental benefits.
- ☐ Focus is on the restoration of ecosystem functions, not single species habitat or improvements that are primarily of economic or commercial importance.
- ☐ Acquisition of lands should be kept to a minimum. As a target, land value should not exceed 25% TPC. Projects which exceed this amount are not likely to receive priority for budget purposes.
- ☐ Design standards should reflect project specific risks; for example, a levee creating a wetland need not be built to flood control standards.
- ☐ The Corps uses an ecosystem approach and the planning methodology of the Principles and Guidelines. The ecosystem approach focuses on protecting or restoring the structures and functions provided by a complete ecosystem.
- ☐ The Corps focuses on engineering solutions to ecosystem problems directly associated with the hydrologic regime. The Corps may collaborate with other agencies to optimize resources and expertise.
- ☐ Proposed projects must be justified on the basis of monetary and non-monetary benefits, but a traditional benefit-cost ratio need not be developed since the primary benefit (improved ecosystem functions) is usually not measurable in dollars.

ENVIRONMENTAL PROTECTION and RESTORATION, Specifically Authorized Projects

Authority

- ☐ Section 103(c), WRDA 1986 (P.L. 99-662) as amended by Section 210 of WRDA 1996 (P.L. 104-303)

Provisions

- ☐ Section 210 of WRDA 1996 established environmental protection and restoration as a primary project purpose with cost sharing as shown on the next page.
- ☐ Corps policy was summarized on previous two pages (pages 56 and 57). Detailed policy is contained in ER 1105-2-100, Chapter 3-5 and Appendix F, Ecosystem Restoration.

Cost Sharing

- ☐ The Non-Federal sponsor pays 35% of total project first cost.
- ☐ The non-Federal sponsor provides all LERRD required. The value of LERRD is credited towards the sponsor's 35% share of total first costs, and the Corps will reimburse the sponsor for the amount that LERRD exceeds 35% of first costs. The sponsor cannot receive credit for work-in-kind for PED, design or construction and must pay the difference between the 35% and LERRD in cash. (For cost sharing of Section 206, WRDA 1996 projects, see pages 65 and 66)

- ☐ The non-Federal sponsor pays 100% of the cost of OMRR&R.

See the following pages for information on other environmental protection and restoration programmatic authorities.

ENVIRONMENTAL PROTECTION and RESTORATION, Project Modifications for Improvement of the Environment

Authority

- ☐ Section 1135 of WRDA 1986 (P.L. 99-662) as amended. This is a continuing authority.

Provisions

- ☐ Provides authority to modify the structures and operations of Corps projects to improve the quality of the environment when it is determined that such modifications are feasible and consistent with the authorized project purposes. It also provides authority to implement restoration measures at locations where projects built by the Corps or jointly by the Corps and other federal agencies, have contributed to the degradation of the quality of the environment, if such measures do not conflict with authorized project purposes.
- ☐ The Federal share of the costs for any one project may not exceed \$5,000,000. There is an annual appropriation limit of \$25,000,000.
- ☐ The non-Federal sponsor may be a nonprofit entity, with the consent of the affected local government.
- ☐ Section 1135 projects can be located with mitigation improvements, but cannot be used to fulfill mitigation requirements.
- ☐ Consideration should be given to using other authorities (such as Section 210 of WRDA 1996, page 59) if the expected restoration costs exceed the current Section 1135 per project Federal share limit, or if restoration can be accomplished through no-cost, operational only changes.

Cost Sharing

Feasibility study funds are initially funded completely by the Federal government. However, if the proposal is approved for implementation, the costs of the feasibility study and plans and specifications must be included as part of the total project modification costs. Work-in-kind may be provided subsequent to execution of the PCA, however, the value may not exceed 80% of the non-Federal share. The non-Federal sponsor is responsible for:

- ☐ paying 25% of the total project modification costs;
- ☐ providing all LERRD. The value of LERRD is credited towards the sponsor's 25% share of the total first cost and the Corps will reimburse the sponsor the amount that LERRD exceeds 25% of first costs.
- ☐ paying 100% of OMRR&R.

ENVIRONMENTAL PROTECTION and RESTORATION, Beneficial Use of Dredged Material

Authority

- ☐ Section 204, WRDA 1992 (P.L. 102-980), as amended. This is a continuing authority.

Provisions

- ☐ Provides authority for the SA to implement projects for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in connection with dredging for construction, operation, or maintenance dredging of an authorized navigation project.
- ☐ These projects may be undertaken if the SA finds that monetary and non-monetary benefits justify project costs, and the project does not degrade the environment.
- ☐ There is an annual appropriation limit of \$15,000,000.
- ☐ The non-Federal sponsor may be a nonprofit entity, with the consent of the affected local government.

Cost Sharing

Feasibility study funds are initially funded completely by the Federal government. However, if the proposal is approved for implementation, the costs of feasibility and plans and specifications must be included and shared as part of the total project modification costs. The non-Federal sponsor is responsible for :

- ☐ 25% of project first costs, including all LERRD. The value of LERRD is credited towards the sponsor's 25% share of the total first cost and the Corps will reimburse the sponsor the amount that LERRD exceeds 25% of first costs. The sponsor cannot receive credit for work-in-kind and must pay the difference between the 25% and LERRD in cash.
- ☐ 100% of OMRR&R.

ENVIRONMENTAL PROTECTION and RESTORATION, Aquatic Ecosystem Restoration

Authority

- ☐ Section 206, WRDA 1996 (P.L. 104-303), as amended. This is a continuing authority.

Provisions

- ☐ The Corps may carry out aquatic ecosystem restoration and protection projects if the project will improve environmental quality, is in the public interest, and is cost effective.
- ☐ The Federal share of the costs for any one project may not exceed \$5,000,000. There is an annual appropriation limit of \$25,000,000.
- ☐ The non-Federal sponsor may implement a section 206 project and be reimbursed for the Federal share of the project cost if the project is completed prior to October 1, 2003. However, to be eligible for reimbursement, the sponsor must not initiate work for which reimbursement will be sought prior to execution of a PCA.

Cost Sharing

Feasibility study funds are initially funded completely by the Federal government. However, if the proposal is approved for implementation, the costs of feasibility and plans and specifications must be included and shared as part of the total project modification costs. Work-in-kind may be provided subsequent to execution of the PCA. The non-Federal sponsor is responsible for:

- ☐ paying 35% of the total project costs.
- ☐ providing all LERRD. The value of LERRD is credited towards the sponsor's 35% share of the total first cost and the Corps will reimburse the sponsor the amount that LERRD exceeds 35% of first costs.

- ☐ paying 100% of OMRR&R.

ENVIRONMENTAL PROTECTION and RESTORATION, Fish and Wildlife Mitigation

Authority

- ☐ F&WL Coordination Act, 1958,
(P.L. 85-624)
- ☐ Sections 103 (c) and 906 (a-d), WRDA 1986, (P.L. 99-662)
- ☐ Section 221, WRDA 1999 (P.L. 106-53)

Provisions

- ☐ Provides for modifications of projects 60% complete or less on 12 August 1958.
- ☐ Section 906 of WRDA 1986 establishes a comprehensive mitigation policy for water resources projects that generally reinforces and supplements the mitigation policy developed in response to the requirements of the Fish & Wildlife Coordination Act, which requires projects to include justifiable means and measures of mitigation.
- ☐ Requires Congressional authorization of land acquisition except for authority provided by Section 906(b), P.L. 99-662.
- ☐ Requires the Corps to determine justification and desirability of project modification.

Cost-Sharing

- ☐ Costs are assigned to appropriate project purposes in Section 103(c) and are shared accordingly.
- ☐ Not more than 80% of the non-Federal share of first costs may be satisfied through in-kind contributions, including facilities, supplies, and services that are necessary to carry out the enhancement of the project. (In accordance with Administration policy, Section 221 of WRDA 1999, has been applied only to the Upper Mississippi River Environmental Management Program.)

ENVIRONMENTAL PROTECTION and RESTORATION, Streamflow Regulation

Authority

- ☐ Section 102, Clean Water Act of 1972, (P.L. 92-500), as amended.
- ☐ Section 103 (c) and (d), WRDA 1986,
(P.L. 99-662)

Provisions

- ☐ In the planning of Corps projects, consideration shall be given to including storage for streamflow regulation for water quality, navigation, salt water intrusion, recreation, esthetics, and fish and wildlife.
- ☐ The need for, value of, and impact of such storage for water quality shall be determined by the EPA, and for the other purposes, by the Corps.

Cost Sharing

- ☐ Costs for streamflow regulation storage are assigned to appropriate project purposes in Section 103(c) and are shared accordingly.
- ☐ OMRR&R is 100% non-Federal.

ENVIRONMENTAL PROTECTION and RESTORATION, Estuary Habitat Restoration Program

Authority

- ☐ Estuary Restoration Act of 2000, Title 1 of P.L. 106-457

Provisions

- ☐ The Secretary of the Army may carry out estuary habitat restoration projects and provide technical assistance.
- ☐ Estuary is defined to include the Great Lakes.
- ☐ Potential projects are developed and proposed by non-Federal sponsors. Projects to be funded are selected from a list proposed by the Estuary Habitat Restoration Council [established under section 105(b) of this Act]. The five agencies represented on the Council are Army, EPA, Commerce, DOI, and Agriculture.
- ☐ Projects must: (a) address needs identified in an estuary habitat restoration plan, (b) be consistent with the Estuary Habitat Restoration Strategy (section 106 of this Act) prepared by the Estuary Habitat Restoration Council, (c) include a monitoring plan consistent with section 107 of this Act, and, (d) include satisfactory assurances that the non-Federal interests are capable of carrying out the items of local cooperation, including OMRR&R. There are eight additional factors to be considered and two priority factors.
- ☐ Authorized appropriations for the Secretary of the Army are \$50,000,000 in fiscal years 2002 and 2003; \$60,000,000 in fiscal year 2004; and \$75,000,000 in fiscal year 2005. Additional funds are authorized for Commerce to carry out the requirements of section 107 of this Act.

Cost Sharing

- ☐ For most projects the Federal share of the project costs (excluding OMRR&R) shall not exceed 65%. Non-Federal sponsors are responsible for providing required LERRD. The value of LERRD is credited toward the sponsor's share of the project cost. The non-Federal sponsor is responsible for all costs of OMRR&R. Non-governmental organizations may qualify as project sponsors. The non-Federal share may include in-kind contributions.
- ☐ The Federal share of the incremental additional cost of including pilot testing of, or a demonstration of, an innovative technology shall be 85%.

CONTINUING AUTHORITIES PROGRAM

The continuing authorities program is a group of legislative authorities by which the Corps may proceed directly to construction without further Congressional authorization. Information on each program may be found by referring to the appropriate page. Federal project limits and Federal annual program limits are listed below in millions:

Section	Page No.	Project Limit	Annual Program Limit
14	25	\$1.0	\$15.0
103	32	\$2.0	\$30.0
107	8	\$4.0	\$35.0
111	11	\$5.0	N/A
204	63	None	\$15.0
205	20	\$7.0	\$50.0
206	65	\$5.0	\$25.0
208	22	\$0.5	\$7.5
1135	60	\$5.0	\$25.0

REVIEW OF COMPLETED PROJECTS (Section 216)

Authority

- ☐ Section 216, 1970 FCA (P.L. 91-611)
- ☐ Sections 103, 105 and 905; WRDA 1986, (P.L. 99-662)

Provisions

- ☐ General authority for the Secretary of the Army to review operations of completed projects, when found advisable due to changed physical, economic, or environmental conditions. A report is made to Congress on advisability for modifying structures or operations.

Cost Sharing

- ☐ Studies - Reconnaissance 100% Federal; Feasibility 50% Federal/50% non-Federal.
- ☐ Improvement costs are allocated to the Federal government or non-Federal sponsors in accordance with the basic project authority and existing policies.

MULTI-PURPOSE, Flood Mitigation and Riverine Restoration Program

Authority

- ☐ Section 212, WRDA 1999 (P.L. 106-53), as amended. This is a continuing authority limited in funding, duration and scope. Funding was statutorily authorized in FY 2001. However, no funds were appropriated for this program in FY 2001 and no funds were included in the Administration's budget for FY 2002.

Provisions

- ☐ The Secretary of the Army may implement projects that reduce flood hazards and restore the natural function and values of rivers. Projects must significantly reduce potential flood damages, improve the quality of the environment and be justified considering all costs and beneficial outputs of the project. Projects may include structural as well as nonstructural flood damage reduction measures.
- ☐ One of the priority considerations is to be the extent to which the appropriate State government supports the project. Additionally, the Secretary is to examine a number of areas listed in the act.
- ☐ Authorized appropriations are \$20,000,000 for FY 2001, \$30,000,000 for FY 2002, and \$50,000,000 for each of fiscal years 2003 through 2005. The Federal share of a project may not exceed \$30,000,000. All studies and projects are to be fully funded within the program funding authorized in this section.
- ☐ The House and Senate committees must be notified of each project proposed for implementation and must approve by resolution any project for which the Federal cost of construction exceeds \$15,000,000.

Cost Sharing

- ☐ The non-Federal share of the study will be 50 percent. This amount may be provided as work-in-kind.
- ☐ The non-Federal share of the costs of implementation will be a minimum of 35 percent. The exact amount will depend on the value of lands required for the structural flood damage reduction measures.

- ☐ Non-Federal sponsors are responsible for providing required LERRD. The value of LERRD is credited toward the sponsor's share of the project cost.
- ☐ The non-Federal sponsor is responsible for all costs of OMRR&R.

TRIBAL PARTNERSHIP PROGRAM

Authority

- ☐ Section 203, WRDA 2000(P.L. 106-541). This is a continuing authority planning program. Funding is statutorily authorized to begin in FY 2002. No funds were included in the Administration's budget for FY 2002.

Provisions

- ☐ Authorizes, in cooperation with Indian tribes and heads of other Federal Agencies, a program whereby the Secretary of the Army may study and determine the feasibility of carrying out water resources development projects that will substantially benefit Indian tribes and are located primarily within Indian country (as defined in 18U.S.C.1151) or in proximity to Alaskan Native Villages.
- ☐ Studies may address projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources and such other projects as the Secretary of the Army, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate.
- ☐ The Secretary of the Army will consider the authorities and programs of the Department of the Interior and other Federal agencies in studies and in recommendations for carrying out of projects.
- ☐ The program is \$5,000,000 per year for fiscal years 2002 through 2006 with not more than \$1,000,000 for any tribe.

Cost Sharing

- ☐ Cost sharing agreements for studies are subject to the ability of the non-Federal sponsor to pay in accordance with procedures to be established by the Secretary of the Army. The Secretary may credit toward the non-Federal share of the cost of a study, the cost of services, studies, supplies or other in-kind contributions provided by the non-Federal interest if the Secretary determines that the contributions will facilitate completion of the study.

ABILITY TO PAY

Authority

- ☐ Section 103(m) of WRDA 1986, as amended (P.L.99-662)
- ☐ Section 203(d)(1) of WRDA 2000, (P.L. 106-541)
- ☐ Section 204 of WRDA 2000, (P.L. 106-541). This section amends Section 103(m) of WRDA 1986.

Provisions (Current as of WRDA 2000)

- ☐ Any cost sharing agreement for a study under section 203(d)(1) of WRDA 2000 on Tribal land (as defined in 18U.S.C.1151) or in proximity to Alaskan Native villages shall be subject to the ability of the non-Federal sponsor to pay in accordance with rules to be established by the Secretary of the Army.

- ☐ Any cost sharing agreement for a feasibility study, or for construction of an environmental protection and restoration project, a flood control project, a project for navigation, storm damage protection, shoreline erosion, hurricane protection, or recreation, or an agricultural water supply project, under section 204 of WRDA 2000 shall be subject to the ability of the non-Federal interests to pay in accordance with procedures and criteria to be determined by the Secretary of the Army.

Cost Sharing

- ☐ For cost agreements for flood control projects authorized after 17 November 1986, the ability to pay rule established by the Secretary of the Army as published in the Federal Register (60 FR 5133) shall apply until such time as a new rule is developed in response to WRDA 2000.
- ☐ For any cost sharing agreement for a feasibility study, or cost sharing agreement for construction of an environmental protection and restoration project, a flood control project, a project for navigation, storm damage protection, or recreation, or an agricultural water supply project executed after 10 December 2000, shall be in accordance with an ability to pay rule to be determined by the Secretary of the Army in response to Sections 203(d)(1) and 204 of WRDA 2000.

AQUATIC PLANT CONTROL

Authority

- ☐ Section 104, 1958 RHA (P.L. 85-500), as amended
- ☐ Sections 103 (c)(6), 105 and 941, WRDA 1986 (P.L. 99-662). This is a continuing authority.
- ☐ Sections 225 and 540 of WRDA 1996, (P.L. 104-303)
- ☐ Section 205 of WRDA 1999 (P.L. 106-53)

Provisions

- ☐ The Corps may cooperate with non-Federal agencies for authorized plant control of major economic significance on navigable water areas not under the jurisdiction of the Corps of Engineers (reservoirs, channels, harbors) or other federal agencies.
- ☐ Program limited to \$15,000,000 a year Construction General funds.
- ☐ Initiation of aquatic plant control reconnaissance and feasibility studies must be approved by ASA(CW).

Research

- ☐ This is the only Federally authorized research program for aquatic plant management.
- ☐ The purpose is to provide effective, economical, and environmentally compatible control techniques.
- ☐ Programmatic research is 100% Federal, site specific research with local benefits is 50% Federal, 50% non-Federal.

Cost Share Control Actions

- ☐ Studies:

Initial Appraisal Letter Report, 100% Federal.

Reconnaissance, 100% Federal (requires ASA(CW) approval to initiate), \$15,000 maximum.

Feasibility (50% Federal, 50% non-Federal). Includes NEPA document, cooperative agreement, and management plan.

- ☐ Control actions - 50% Federal, 50% non-Federal. Non-Federal agencies agree to hold and save Federal government free from damages.

DAM SAFETY ASSURANCE PROGRAM

Authority

- ☐ Section 1203, WRDA 1986 (P.L. 99-662)

Provisions

- ☐ The Dam Safety Assurance Program (DSAP) provides for modification of completed Corps dams and related facilities for safety purposes due to new hydrologic or seismic data or changes in state-of-the-art design or construction criteria.
- ☐ Dam safety modifications which do not qualify under DSAP are accomplished under Operations and Maintenance, General funding (for smaller projects) or as Major Rehabilitation under Construction, General funding (for larger projects).

Cost Sharing

- ☐ Fifteen percent of dam modification costs under DSAP are paid by non-Federal sponsors or agreement signatories in the same proportion as the initial project construction costs.

PLANNING ASSISTANCE TO STATES (SECTION 22)

Authority

- ☐ Section 22, WRDA 1974 (P.L. 93-251), as amended
- ☐ Section 605, P.L. 96-597
- ☐ Section 221, WRDA 1996 (P.L. 104-303)

Provisions

- ☐ General authority for the Corps to cooperate with states, the District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands (now only Palau).
- ☐ Corps provides technical assistance to support state preparation of comprehensive water and related land resources development plans, including watershed and ecosystem planning.
- ☐ Corps assists in conducting individual studies supporting the state plan.
- ☐ Assistance is given on the basis of state requests and availability of Corps expertise rather than through Congressional study authorization procedures.
- ☐ Section 22 cannot be used to supplement other ongoing or pending Corps efforts, or to offset required state contributions to Federal grant programs.

Cost Sharing

- ☐ Federal assistance is in the form of an effort or service sharing basis; it is not an outright grant.

- ☐ Non-Federal sponsor contributes 50% of the costs. Nationwide annual funds may not exceed \$10 million, with not more than \$500 thousand in any one year in any one state.

REGULATORY PROGRAM, Navigation Safety and Improvements

Authority

- ☐ Section 7 of the River and Harbor Act of 1917.

Provisions

- ☐ Corps may promulgate regulations for the use, administration, and navigation of the navigable waters of the United States for the protection of life and property and for the operations of the United States in providing channel improvements.
- ☐ Procedures for the promulgation of these regulations are similar to those for the permit program.
- ☐ Regulations can be prescribed for the use and navigation of “danger zones” - that is, any area likely to be endangered by Department of Defense operations. The Corps authority is exercised to facilitate DOD operations without endangering the boating public.

REGULATORY PROGRAM, Permits for Work in Waters of the United States

Authority

- ☐ Sections 9 and 10 of the River and Harbor Act of 1899.

Provisions

- ☐ (Section 9). The Chief of Engineers and Secretary of the Army must approve plans for the construction of any dam or dike across any navigable water of the United States. Legislative approval is also needed: if the navigable portion of the waterbody lies wholly within the limits of one state, the structure may be built under the authority of the legislature of that state; otherwise the approval of the U.S. Congress is required.
- ☐ (Section 10). The Chief of Engineers must approve plans to build or modify any structure in or over any navigable water of the United States, or the accomplishment of any other work affecting the course, location, condition, or physical capacity of navigable waters.

Jurisdictional Limits

- ☐ **For rivers and lakes.** Federal regulatory jurisdiction extends laterally to the entire water surface and bed of a navigable waterbody, which includes all the land, wetlands, and waters below the ordinary high water mark. (33 CFR 329.11(a)) At some point along its length, a navigable waterbody will change its character and lose its real or potential physical ability to support commerce. That upper limit point where the waterbody ceases to be a navigable water of the United States is usually termed the "head of navigation". (33 CFR 329.11(b))
- ☐ **For ocean and tidal waters.** The Corps regulatory jurisdiction includes all ocean and coastal waters generally within a zone three nautical miles seaward from the coast line. For bays and estuaries, jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action. This includes marshlands and similar areas insofar as those areas are subject to inundation by the mean high tidal waters. The base line (ordinary low tide line) from which the territorial sea is measured is specified in the Convention on the Territorial Sea and the Contiguous Zone. (15 UST 1 606; TIAS 5639; 33 CFR 329.12)

REGULATORY PROGRAM, Sections 103 and 404

Authority

- ☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972
- ☐ Section 404 of the Clean Water Act

Provisions

- ☐ (Section 404). The Secretary of the Army, acting through the Chief of Engineers, is authorized to issue permits for discharges of dredged or fill materials into the waters of the United States, provided that such discharges are found to be in compliance with the guidelines published by EPA to implement Section 404 (b) (1) of the Clean Water Act.
- ☐ (Section 103). The Secretary of the Army is authorized to issue permits for the transportation of dredged materials for ocean disposal when dumping will not unreasonably degrade or endanger human health, welfare or amenities, or the marine environment, ecological system, or economic potentialities.
- ☐ The selection of disposal sites will be in accordance with criteria developed by the Administrator of the EPA in consultation with the Secretary of the Army. The Administrator can prevent the issuance of a permit if he finds that the dumping of the material will result in unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries, or recreational areas.
- ☐ About 70% of the permit applications the Corps receives each year require decisions under the authority of Section 404.

Jurisdictional Limits

- ☐ **For the Clean Water Act.** Jurisdiction is more extensive than under the River and Harbor Act of 1899, (33 CFR 328). Under Section 404, jurisdiction extends to tributaries of navigable waters and adjacent wetlands.
- ☐ **For the Marine Protection, Research and Sanctuaries Act of 1972.** This Act defines a regulatory jurisdiction with respect to "Ocean Waters." (33 CFR 324.2)

REGULATORY PROGRAM, General Policies for Evaluating Permit Applications

The following policies are applicable to the review of all applications for Department of the Army permits.

Public Interest Review

- ☐ The decision whether to authorize a proposed activity, and if authorized, the conditions under which it will be allowed to occur, are determined by the outcome of the general public interest balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered, as must their cumulative effects. Considered are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people. No permit will be granted if issuance is found to be contrary to the public interest.

The following general criteria will be considered in the evaluation of every application:

- (a) The relative public and private need for the proposed structure or work;

- (b) Where there are unresolved conflicts respecting resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work;
- (c) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work may have on public and private uses to which the area is suited.

REGULATORY PROGRAM, Section 404(b)(1) Guidelines Analysis

The following criteria must be met:

- (a) Project must represent least environmentally damaging, practicable alternative;
- (b) Project must comply with the applicable requirements, both Federal (for example, Marine Sanctuary Regulations) and state (such as state water quality standards);
- (c) Project must not result in significant degradation of the aquatic environment;
- (d) All reasonable steps (for example, dredging windows or wetlands restoration) must be taken to minimize project impacts.

REGULATORY PROGRAM, Types of Permits

Nationwide General Permits

Nation wide General permits are issued by the Chief of Engineers for activities that are:

- ☐ on a national basis;
- ☐ similar in nature, and cause minimal environmental impacts (both individually and cumulatively).

Regional General Permits

Regional permits are issued by a District or Division Engineer for general activities when:

- ☐ the activities are on a regional basis;
- ☐ the activities are similar in nature and cause minimal environmental impact (both individually and cumulatively); and
- ☐ the regional permit reduces duplication of regulatory control by State and Federal agencies.

Programmatic General Permits

Programmatic permits are a type of general permit founded on an existing state, local or other Federal agency program and designed to avoid duplication with that program. They are issued to Federal, state and local agencies and Tribes when the agency:

- ☐ licenses some or all activities regulated by the Corps in water of the U.S.;
- ☐ provides an opportunity for public comment;
- ☐ protects the aquatic environment to the same degree as the Corps Regulatory Program.

Individual Permits

Individual permits are issued by the District Engineer for activities that do not meet the criteria for a nationwide or regional permit.

- ☐ A standard permit requires a public notice, public interest review, and National Environmental Policy Act documentation.
- ☐ A letter permit may be issued without public notice for certain activities that would not have significant impacts and would encounter no appreciable opposition. These permits are issued under Section 404, after the District Engineer has published a list of categories of activities to be covered by abbreviated processing procedures.

Regulatory information is available at the following website:

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg>

INTERAGENCY AND INTERNATIONAL SUPPORT

Authorities

- ☐ For Federal agencies: Economy Act (31 U.S.C. 1535), 10 U.S.C. 3036(d).
- ☐ For state and local entities: Intergovernmental Cooperation Act (31 U.S.C. 6505).
- ☐ For International Customers: Technical Assistance Program (33 U.S.C. 2314a); Foreign Assistance Act (22 U.S.C. 2357, section 607); Federal Technology Transfer Act (15 U.S.C. 3710a).

Provisions

- ☐ Major Subordinate Commands, Districts, Laboratories, and Centers are encouraged to build better relationships with other Federal agencies and International customers (as appropriate) and accept reimbursable work, providing the criteria of ER 1140-2-211 are met. That regulation may be downloaded from:

<http://www.usace.army.mil/inet/usace-docs/eng-regs/er1140-1-211/toc.htm>

- ☐ Providing assistance to state and local governments under the Intergovernmental Cooperation Act (31 U.S.C. 6505), is authorized by Section 211 of WRDA 2000, provided the Corps is “uniquely qualified” to provide the services.

The Corps reimbursable program supports non-DOD Federal agencies, state and local governments, Indian tribes, foreign governments, international organizations, and U.S. firms overseas.

The program is conducted in partnership with the private sector. While relying on the private sector for technical expertise, the Corps functions as an extension of the agency’s staff providing Federal presence and government oversight.